

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 50200	DATE	9/25/2001
CASE TITLE	U.S.A. vs. HENDERSON		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

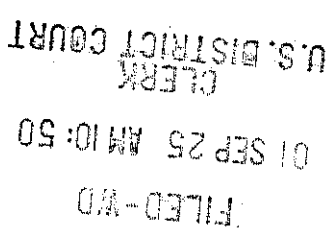

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m)   ☐ General Rule 21   ☐ FRCP41(a)(1)   ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons stated on the reverse Memorandum Opinion and Order, the court's order of 6/29/01 is vacated. Henderson is to file an amended section 2255 motion within 30 days or notify the court within that time of his election to stand on his present motion. Government to respond to motion within 30 days of filing amended motion or election not to do so.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court.		number of notices	
No notices required.		SEP 25 2001 date docketed	
Notices mailed by judge's staff.		docting deputy initials	
Notified counsel by telephone.		SEP 25 2001 date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
Mail AO 450 form.			
Copy to judge/magistrate judge.			
/SEC	courtroom deputy's initials	Date/time received in central Clerk's Office	

## MEMORANDUM OPINION AND ORDER

On June 29, 2001, this court dismissed as untimely Michael Henderson's motion to vacate, set aside or correct his federal sentences based on the Supreme Court's opinion in Apprendi v. New Jersey, 530 U.S. 466 (2000). On application to the Court of Appeals for the Seventh Circuit for leave to file a second motion under 28 U.S.C. § 2255, the Court of Appeals held Henderson's prior Rule 33 motion could not be deemed a section 2255 motion unless Henderson had been warned by the district court (which he was not) about the consequences of his mistake in labeling it as a Rule 33 motion if it really was one under section 2255. Henderson v. United States, No. 01-2989, 2001 WL 985767 (7<sup>th</sup> Cir. Aug. 29, 2001). Consequently, the motion before the Court of Appeals was dismissed as moot. Now, Henderson has filed for leave to file a motion pursuant to section 2255. As the June 29, 2001 order dismissing his section 2255 motion as untimely was incorrect, the court vacates that order and will allow Henderson to either have that prior motion stand or allow him to file an amended section 2255 motion within 30 days. Whether Apprendi is to be applied retroactively to collateral attacks such as this or a procedural bar exists to claiming retroactive application is a matter yet to be determined in this case. See Ashley v. United States, No. 01-1733, 2001 WL 1085010 (7<sup>th</sup> Cir. Sept. 12, 2001).